



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 15, 1994

Mr. Richard D. Monroe
Deputy General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Building
125 East 11th Street
Austin, Texas 78701-2483

OR94-370

Dear Mr. Monroe:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act. Your request was assigned ID# 26166.

The Texas Department of Transportation (the "department") received a request for the department's plans for the intersection of Pine Street and North Treadaway in Abilene. You contend that the information is excepted from disclosure under section 552.103(a) of the Open Records Act. The department has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in this situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The department must meet both prongs of this test for the requested information to be excepted from disclosure under section 552.103(a).

The department has provided a police report to show that the intersection in question was the site of an accident which claimed the life of an individual and also resulted in property damage. The requestor is an adjuster for an insurance company investigating the accident. The department received a letter from the insurance company stating, in part:

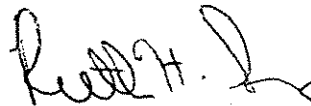
Our investigation is ongoing, but, at this time, it appears the State of Texas may have been negligent and responsible for the resulting damages in this incident. In the event our investigation proves this to be the case, our client insurance company will look to you for reimbursement of any indemnified amount extended.

We note that the police report you sent to this office does not indicate how the State of Texas might be "negligent" in regard to the accident that occurred.

This office has previously held that an investigation into the possibility of bringing suit is not sufficient to trigger section 552.103(a). Open Records Decision No. 557 (1990) at 6. The letter from the insurance company indicates that the insurance company is investigating the circumstances of the accident, but not that suit will be filed. The letter does show that there may be a chance of litigation, but this chance is not enough to show that litigation is reasonably anticipated. Open Records Decision Nos. 518 (1989) at 5; 452 (1986) at 4. Whether litigation is reasonably anticipated must be decided based on the circumstances of each case. Open Records Decision No. 350 (1982) at 3. In this situation, the department has not met its burden of showing the applicability of section 552.103(a). The information must therefore be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref.: ID# 26166

Enclosures: Submitted documents

cc: Mr. Carl V. Trotti
Manager
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(w/o enclosures)